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UPPER COLORADO AND SAN JUAN RIVER BASINS ENDANGERED FISH RECOVERY PROGRAMS (PUBLIC LAW 106-392 (114 Stat. 1602))

SECTION 1. PURPOSE.

The purpose of this Act is to authorize and provide funding for the Bureau of Reclamation to continue the implementation of the endangered and threatened fish recovery implementation programs for the Upper Colorado and San Juan River Basins in order to accomplish the objectives of these programs within a currently established time schedule.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) The term “Recovery Implementation Programs” means the intergovernmental programs established pursuant to the 1988 Cooperative Agreement [to implement the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River dated September 29, 1987, and the 1992 Cooperative Agreement to implement the San Juan River Recovery Implementation Program dated October 21, 1992, and as they may be amended] for the Recovery Implementation Program for Endangered Species in the Upper Colorado River Basin dated September 29, 1987, and the 1992 Cooperative Agreement for the San Juan River Basin Recovery Implementation Program dated October 21, 1992, as the agreements may be amended and extended by the parties thereto.

(2) The term “Secretary” means the Secretary of the Interior.

(3) The term “Upper Division States” means the States of Colorado, New Mexico, Utah, and Wyoming.

(4) The term “Colorado River Storage Project” or “storage project” means those dams, reservoirs, power plants, and other appurtenant project facilities and features authorized by and constructed in accordance with the Colorado River Storage Project Act (43 U.S.C. 620 et seq.).

(5) The term “capital projects” means planning, design, permitting or other compliance, pre-construction activities, construction, construction management, and replacement of facilities, and the acquisition of interests in land or water, as necessary to carry out the Recovery Implementation Programs.

(6) The term “facilities” includes facilities for the genetic conservation or propagation of the endangered or threatened fishes, those for the restoration of floodplain habitat or fish passage, those for control or supply of instream flows, and those for the [removal or translocation] control of nonnative fishes.

(7) The term “interests in land and water” includes, but is not limited to, [long-term] leases and easements, and [long-term] enforcement, or other agreements protecting instream flows.

(8) The term “base funding” means funding for operation and maintenance of capital projects, implementation of recovery actions other than capital projects, monitoring and research to evaluate the need for or effectiveness of any recovery action, and program management, as necessary to carry out the Recovery Implementation Programs. Base funding also includes annual funding provided under the terms of the [1988 Cooperative Agreement and the 1992 Cooperative Agreement] Recovery Implementation Programs.

(9) The term “recovery actions other than capital projects” includes short-term [leases and agreements] acquisitions for interests in land, water, and facilities; the reintroduction or augmentation of endangered fish stocks; and the removal, translocation, or other control of nonnative fishes, as approved under the Recovery Implementation Programs.

(10) The term “depletion charge” means a one-time contribution in dollars per acre-foot to be paid to the United States Fish and Wildlife Service pursuant to the Recovery Implementation Program for Endangered Species in the Upper Colorado River Basin based on the average annual new depletion by each project.

SEC. 3. AUTHORIZATION TO FUND RECOVERY PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS FOR FEDERAL PARTICIPATION IN CAPITAL PROJECTS.— [(1) There is hereby authorized to be appropriated to the Secretary, \$88,000,000 to undertake capital projects to carry out the purposes of this Act. Such funds]

(1) AUTORIZATION. -

(A) IN GENERAL. -Subject to subparagraph (B), there is authorized to be appropriated to the Secretary for use by the Bureau of Reclamation to undertake capital projects to carry out the purposes of this Act \$50,000,000 for the period of fiscal years 2024 through 2031.

(B) INFLATION ADJUSTMENT. -Each fiscal year, the amount authorized to be appropriated under subparagraph (A) shall be adjusted for inflation from the date of enactment of the Upper Colorado and San Juan River Basin Endangered Fish Recovery Programs Reauthorization Act of 2024 to the beginning of that fiscal year.

(C) NONREIMBURSABLE FUNDS. – Amounts made available pursuant to subparagraph (A) shall be considered a nonreimbursable Federal expenditure.

(2) The authority of the Secretary, acting through the Bureau of Reclamation, under this or any other provision of law to implement capital projects for the Recovery Implementation [Program for Endangered Fish Species in the Upper Colorado River Basin shall expire in fiscal year 2024] Programs shall expire in fiscal year 2031 unless reauthorized by an Act of Congress.

[(3) The authority of the Secretary to implement the capital projects for the San Juan River Basin Recovery Implementation Program shall expire in fiscal year 2007 unless reauthorized by an Act of Congress.]

[(b) COST OF CAPITAL PROJECTS.—The total costs of the capital projects undertaken for the Recovery Implementation Programs receiving assistance under this Act shall not exceed \$100,000,000 of which—

- (1) costs shall not exceed \$184,000,000 for the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin through fiscal year 2024; and
- (2) costs shall not exceed \$25,000,000 for the San Juan River Recovery Implementation Program through fiscal year 2024.

The amounts set forth in this subsection shall be adjusted by the Secretary for inflation in each fiscal year beginning after the enactment of this Act.]

[(c) NON-FEDERAL CONTRIBUTIONS TO CAPITAL PROJECTS.—

(1) The Secretary, acting through the Bureau of Reclamation, may accept contributed funds from the Upper Division States, or political subdivisions or organizations with the Upper Division States, pursuant to agreements that provide for the contributions to be used for capital projects costs. Such non-Federal contributions shall not exceed \$17,000,000.

(2) In addition to the contribution described in paragraph (1), the Secretary of Energy, acting through the Western Area Power Administration, and the Secretary of the Interior, acting through the Bureau of Reclamation, may utilize power revenues collected pursuant to the Colorado River Storage Project Act to carry out the purposes of this subsection. Such funds shall be treated as reimbursable costs assigned to power for repayment under section 5 of the Colorado River Storage Project Act. This additional contribution shall not exceed \$17,000,000. Such funds shall be considered a non-Federal contribution for the purposes of this Act. The funding authorized by this paragraph over any 2-fiscal-year period shall be made available in amounts equal to the contributions for the same 2-fiscal-year period made by the Upper Division States pursuant to paragraph (1).

(3) The additional funding provided pursuant to paragraph (2) may be provided through loans from the Colorado Water Conservation Board Construction Fund (37–60–121 C.R.S.) to the Western Area Power Administration in lieu of funds which would otherwise be collected from power revenues and used for storage project repayments. The Western Area Power Administration is authorized to repay such loan or loans from power revenues collected beginning in fiscal year 2012, subject to an agreement between the Colorado Water Conservation Board, the Western Area Power Administration, and the Bureau of Reclamation. The agreement and any future loan contracts that may be entered into by the Colorado Water Conservation Board, the Western Area Power Administration, and the Bureau of Reclamation shall be negotiated in consultation with Salt Lake City Area Integrated Projects Firm Power Contractors. The agreement and loan contracts shall include provisions designed to minimize impacts on electrical power rates and shall ensure that loan repayment to the Colorado Water Conservation Board, including principal and interest, is completed no later than September 30, 2057. The Western Area Power Administration is authorized to include in power rates such sums as are necessary to carry out this paragraph and paragraph (2).

(4) All contributions made pursuant to this subsection shall be in addition to the cost of replacement power purchased due to modifying the operation of the Colorado River Storage Project and the capital cost of water from Woford Mountain Reservoir in Colorado. Such costs shall be considered as non-Federal contributions, not to exceed \$87,000,000.]

(b) NON-FEDERAL CONTRIBUTIONS TO CAPITAL PROJECTS.—The Secretary, acting through the Bureau of Reclamation, may accept contributed funds, interests in land and water, or other contributions from the Upper Division States, political subdivisions of the Upper Division States, pursuant to agreements that provide for the contributions to be used for capital projects costs.

~~[(d)]~~ (c) BASE FUNDING.—

(1) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There is authorized to be appropriated to the Secretary to be used by the Bureau of Reclamation to make the annual base funding contributions to the Recovery Implementation Programs ~~[\$10,000,000 for each of fiscal years 2020 through 2024]~~ \$80,000,000 for the period of fiscal years 2024 through 2031.

(B) NONREIMBURSABLE FUNDS.—The funds contributed to the Recovery Implementation Programs under subparagraph (A) shall be considered a nonreimbursable Federal expenditure.

(2) For the Recovery Implementation Program for the Endangered Fish Species in the Upper Colorado River Basin, the contributions to base funding referred to in paragraph (1) shall not exceed ~~[\$4,000,000 per year]~~ \$52,914,285 for the period of fiscal years 2024 through 2031. For the San Juan River Basin Recovery Implementation Program, such contributions shall not exceed ~~[\$2,000,000 per year]~~ \$27,085,715 for the period of fiscal years 2024 through 2031. The Secretary shall adjust such amounts for inflation ~~[in fiscal years commencing after the enactment of this Act]~~ for fiscal year 2024 and each fiscal year thereafter. Nothing in this Act shall otherwise modify or amend existing agreements among participants regarding base funding and depletion charges for the Recovery Implementation Programs.

~~[(3) The Western Area Power Administration and the Bureau of Reclamation shall maintain sufficient revenues in the Colorado River Basin Fund to meet their obligation to provide base funding in accordance with paragraph (2). If the Western Area Power Administration and the Bureau of Reclamation determine that the funds in the Colorado River Basin Fund will not be sufficient to meet the obligations of section 5(c)(1) of the Colorado River Storage Project Act for a 3-year period, the Western Area Power Administration and the Bureau of Reclamation shall request appropriations to meet base funding obligations.]~~

(3) FEDERAL CONTRIBUTIONS TO ANNUAL BASE FUNDING—

(A) IN GENERAL.—For each of fiscal years 2024 through 2031, the Secretary, acting through the Bureau of Reclamation, may accept funds from other Federal agencies, including power revenue collected pursuant to the Act of April 11, 1956 (commonly known as the ‘Colorado River Storage Act’) (43 U.S.C. 620 et seq.).

(B) AVAILABILITY OF FUNDS.—Funds made available under subparagraph (A) shall be available for expenditure by the Secretary as determined by the contributing agency in consultation with the Secretary.

(C) TREATMENT OF FUNDS.—Funds made available under subparagraph (A) shall be treated as nonreimbursable Federal expenditures.

(D) TREATMENT OF POWER REVENUES.—Any power revenues accepted under subparagraph (A) shall be treated as having been repaid and returned to the general fund of the Treasury.

(4) NON-FEDERAL CONTRIBUTIONS TO ANNUAL BASE FUNDING.—The Secretary, acting through the Bureau of Reclamation, may accept contributed funds from the Upper Division States, political subdivisions of the Upper Division States, or individuals, entities, or organizations within the Upper Division States. Pursuant to agreements that provide for the contributions to be used for annual base funding.

(5) REPLACEMENT POWER.—Contributions of funds made pursuant to this subsection shall not include the cost of replacement power purchased to offset modifications to the operation of the Colorado River Storage Project to benefit threatened or endangered fish species under the Recovery Implementations Programs.

[(e)] (d) AUTHORITY TO RETAIN APPROPRIATED FUNDS.—At the end of each fiscal year any unexpended appropriated funds for capital projects under this Act shall be retained for use in future fiscal years. Unexpended funds under this Act that are carried over shall continue to be used to implement the capital projects needed for the Recovery Implementation Programs.

[(f)] (e) ADDITIONAL AUTHORITY.—The Secretary may enter into agreements and contracts with Federal and non-Federal entities, acquire and transfer interests in land, water, and facilities, and accept or give grants in order to carry out the purposes of this Act.

[(g)] (f) INDIAN TRUST ASSETS.—The Congress finds that much of the potential water development in the San Juan River Basin and in the Duchesne River Basin (a subbasin of the Green River in the Upper Colorado River Basin) is for the benefit of Indian tribes and most of the federally designated critical habitat for the endangered or threatened fish species in the San Juan River Basin is on Indian trust lands, and 2 1/2 miles of critical habitat on the Duchesne River is on Indian Trust Land. Nothing in this Act shall be construed to restrict the Secretary, acting through the Bureau of Reclamation and the Bureau of Indian Affairs, from funding activities or capital projects in accordance with the Federal Government's Indian trust responsibility.

[(h)] (g) TERMINATION OF AUTHORITY.—All authorities provided by this section for the respective Recovery Implementation Program shall terminate upon expiration of the current time period for the respective Cooperative Agreement referenced in section 2(1) [unless the time period for the respective Cooperative Agreement is extended to conform with this Act], as amended or extended.

[(i)] (h) LIMITATION ON INDIRECT COST RECOVERY RATE.—The indirect cost recovery rate for any transfer of funds to the U.S. Fish and Wildlife Service from another Federal agency for the purpose of funding any activity associated with the [Upper Colorado River Endangered Fish Recovery Program] Recovery Implementation Programs or the San Juan River Basin Recovery Implementation Program shall not exceed three percent of the funds transferred. In the case of a transfer of funds for the purpose of funding activities under both programs, the limitation shall be applied to the funding amount for each

program and may not be allocated unequally to either program, even if the average aggregate indirect cost recovery rate would not exceed three percent.

(j) (i) REPORT.—

(1) IN GENERAL.—Not later than September 30, [2022] 2030, the Secretary shall submit to the appropriate committees of Congress a report that—

(A) describes the accomplishments of the Recovery Implementation Programs;

(B) identifies—

(i) as of the date of the report, the listing status under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) of the Colorado pikeminnow, humpback chub, razorback sucker, and bonytail; and

(ii) as of September 30, [2024] 2031, the projected listing status under that Act of each of the species referred to in clause (i);

(C)(i) identifies—

(I) the total expenditures and the expenditures by categories of activities by the Recovery Implementation Programs during the period beginning on the date on which the applicable Recovery Implementation Program was established and ending on September 30, [2022] 2030; and

(II) projected expenditures by the Recovery Implementation Programs during the period beginning on October 1, [2022] 2030, and ending on September 30, [2024] 2031; and

(ii) for purposes of the expenditures identified under clause (i), includes a description of—

(I) any expenditures of appropriated funds;

(II) any power revenues;

(III) any [contributions by the States, power customers, Tribes, water users, and environmental organizations] non-Federal contributions; and

(IV) any other sources of funds for the Recovery Implementation Programs; and

(D) describes— (i) any activities to be carried out under the Recovery Implementation Program after September 30, [2024] 2031; and (ii) the projected cost of the activities described under clause (i).

(2) CONSULTATION REQUIRED.—The Secretary shall consult with the participants in the Recovery Implementation Programs in preparing the report under paragraph (1).